

1 Kyra E. Andrassy, Esq.
2 Admitted *Pro Hac Vice*
3 SMILEY WANG-EKVALL, LLP
4 3200 Park Center Drive, Suite 250
5 Costa Mesa, California 92626
6 Telephone: (714) 445-1000
7 Facsimile: (714) 445-1002
8 kandrassy@swelawfirm.com

6 Maria A. Gall, Esq.
7 Nevada Bar No. 14200
8 BALLARD SPAHR LLP
9 1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
Facsimile: (702) 471-7070
gallm@ballardspahr.com

10 *Attorneys for Receiver
Geoff Winkler of American Fiduciary Services*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

14 SECURITIES AND EXCHANGE COMMISSION.

Plaintiff.

v

PROFIT CONNECT WEALTH
SERVICES, INC., JOY I. KOVAR, and
BRENT CARSON KOVAR.

Defendants.

Case No. 2:21-cv-01298-JAD-BNW

**APPLICATION FOR ALLOWANCE
AND PAYMENT OF FEES AND COSTS
OF THE RECEIVER AND HIS
PROFESSIONALS FOR THE PERIOD
FROM OCTOBER 1, 2021, THROUGH
DECEMBER 31, 2021**

[HEARING REQUESTED]¹

23 Geoff Winkler of American Fiduciary Services, LLC, the permanent receiver
24 (the "Receiver") over Profit Connect Wealth Services, Inc., and any subsidiaries and
25 affiliates (together, "Profit Connect") pursuant to an order entered on August 6, 2021
26 (the "Receiver Order"), submits this application for allowance and payment of his fees

¹ The Receiver requests that the Court schedule a hearing on this application at the same date and time as the hearing on the Receiver's status report, which is being filed on or about November 1, 2021.

1 and costs and the fees and costs of the professionals he employed to assist him in
 2 fulfilling his duties under the Receiver Order. The period of time covered by this
 3 Application is from October 1, 2021, through December 31, 2021 (the "Application
 4 Period"). The Receiver is informed that the Securities & Exchange Commission
 5 ("SEC") has no objection to the relief sought in this Application.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 Because the Receiver is not a licensed attorney, does not have in-house counsel,
 8 and is not a computer expert, he employed professionals to assist him in fulfilling his
 9 duties as the Receiver. Specifically, pursuant to Section X.G. of the Receiver Order,
 10 he retained Smiley Wang-Ekvall, LLP, and Ballard Spahr, LLP, as counsel and Stroz
 11 Friedberg as his computer forensic experts. The Court approved their employment
 12 by order entered on September 21, 2021. Pursuant to this Application, the Receiver
 13 and his professionals seek approval of the following fees and costs: (1) \$284,348.00
 14 in fees and \$12,085.57 in costs for the Receiver; (2) \$60,977.72 in fees and \$2,966.83
 15 in costs for Ballard Spahr, LLP; (3) \$17,967.30 in fees and \$941.41 in costs for Smiley
 16 Wang-Ekvall, LLP; and (4) \$10,758.75 in fees and \$15,064.69 in costs for Stroz
 17 Friedberg. The Receiver seeks authority to pay 80% of the fees on an interim basis
 18 and 100% of the costs.

19 This Application is based on the below written argument, the declarations of
 20 Geoff Winkler, Maria A. Gall, Esq., Kyra E. Andrassy, Esq., and Sergio Kopelev, all
 21 papers on file, and any argument the Court may call and consider.

22 **I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

23 The SEC initiated this action against Profit Connect, Joy Kovar, and Brent
 24 Kovar on July 8, 2021, by the sealed, ex parte filing of a complaint and motion for
 25 temporary restraining order seeking, among other things, the freezing of defendants'
 26 assets and the appointment of a receiver over Profit Connect. The Court granted the
 27 ex parte temporary restraining order, in part, by allowing the asset freeze to proceed
 28

1 but set the motion for a hearing in order to provide defendants an opportunity to be
 2 heard on the temporary receivership request.

3 On July 23, 2021, defendants stipulated to modify the temporary restraining
 4 order to appoint the Temporary Receiver. By order entered on August 6, 2021, the
 5 Court approved a stipulation of the parties appointing the Receiver as the permanent
 6 receiver.

7 During this Application Period, the Receiver's focus was on the auction of
 8 personal property assets that was conducted in December, generating net proceeds of
 9 approximately \$1,259,817 for the receivership estate. The Receiver continues to
 10 identify potential claims that belong to the receivership estate and to gather
 11 information, issue subpoenas, and review books and records and documents that are
 12 produced to identify additional sources of recovery. These efforts will pave the way
 13 for additional recoveries to be obtained by the estate. Counsel continue to coordinate
 14 their efforts to avoid duplication of services.

15 As of December 31, 2021, the Receiver is holding \$7,844,306.86, which does not
 16 include the net proceeds generated from the auction of personal property that was
 17 received after December 31. As set forth in the motion to approve the employment of
 18 the professionals and because receivership work is a form of public service, each of
 19 the professionals has agreed to discount their typical hourly rate by 15%, and this
 20 discount is reflected in the fees being sought in this Application.

21 **II. LEGAL AUTHORITY**

22 “The power of a district court to impose a receivership ... derives from the
 23 inherent power of a court of equity to fashion effective relief.”² “The primary purpose
 24 of equity receiverships is to promote orderly and efficient administration of the
 25 Receivership Estate by the district court for the benefit of creditors.”³ “[T]he practice

27 ² *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).

28 ³ *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986.)

1 in administering an estate by a receiver ... must accord with the historical practice
2 in federal courts or with a local rule.”⁴

3 As the Ninth Circuit explained:

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.⁵

9 Decisions regarding the timing and amount of an award of fees and expenses
10 to the Receiver and his or her professionals are committed to the sound discretion of
11 the Court.⁶ In determining the reasonableness of fees and expenses requested in this
12 context, the Court should consider the time records presented, the quality of the work
13 performed, the complexity of the problems faced, and the benefit of the services
14 rendered to the Estate, along with the Commission's position on the request, which
15 is entitled to "great weight."⁷

III. THE FEES AND COSTS BEING REQUESTED

17 As set forth in prior applications, in evaluating the fees and costs of the
18 Receiver and his professionals, the fact that Profit Connect had no books and records,
19 including books of account, or any functioning accounting department must be taken
20 into account. The absence of these records means that the Receiver and his team

22 || 4 Fed. R. Civ. P. 66.

23 ⁵ *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad deference’ to the court’s supervisory role, and ‘we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose of orderly and efficient administration of the receivership for the benefit of creditors.’”).

²⁷ ⁶ See *SEC v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other grounds, 998 F.2d 922 (11th Cir. 1993)).

²⁸ *7 SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

1 must get the documents that they need to determine what happened with funds put
2 in by investors from third parties. This requires the issuance of subpoenas, and often
3 ensuing discussions with the subpoenaed parties about the scope or timing of the
4 requested production. It also means that the Receiver has had to recreate, and is still
5 in the process of recreating, accounting records by reconstructing the entity's
6 financials using financial statements and offsetting financial records. The majority
7 of these statements and records have had to be procured through subpoenas served
8 on financial institutions.

9 Also, despite the Receivership Order and the principles underlying a federal
10 equity receivership, some investors are seeking other methods of recovery to recoup
11 their investments ahead of other investors. The Receiver is presently aware of a
12 putative class action that is being formed by one set of investors and counsel. The
13 Receiver is also aware of at least one action by an investor against a Profit Connect
14 agent pending in another jurisdiction. The Receiver and his counsel are engaging
15 with counsel in these anticipated and pending lawsuits in order to preserve the assets
16 of the receivership estate.

17 The foregoing highlights some of the actions the Receiver and his legal
18 professionals have been constrained to undertake early in this case and which drives
19 their fees. That said, the Receiver's prompt action in reconstructing Profit Connect's
20 financial records has assisted in his preservation and marshalling of Profit Connect
21 property, including over \$4 million dollars in cryptocurrency and a recovery of \$_____
22 for the personal property assets.

23 Below is a description of the services provided by each of the professionals
24 during the Application Period. All of the fees and expenses incurred during the
25 Application Period will benefit the receivership estate moving forward.

SMILEY WANG-EKVALL, LLP
3200 PARK CENTER DRIVE, SUITE 250
COSTA MESA, CALIFORNIA 92626
(714) 445-1000 FAX (714) 445-1002

1 **a. The Receiver**

2 [Fees of \$284,348.00 and costs of \$12,085.57]

3 Pursuant to paragraph X of the Receiver Order, the Receiver was empowered
 4 and tasked with a broad range of authority, including the authority to take possession
 5 and control of all assets, to assume full control of Profit Connect, to have control of
 6 and be added as the sole authorized signatory for all accounts, to conduct an
 7 investigation and discovery necessary to locate and account for assets, to assess the
 8 viability and profitability of Profit Connect, to take action necessary to preserve and
 9 prevent the disposition, concealment, or dissipation of assets, to employ professionals,
 10 to make an accounting, to make payments and disbursements, to investigate and
 11 prosecute claims, to engage in litigation to preserve or recover assets or to carry out
 12 the Receiver's mandate, and to have access to all mail and electronic mail.

13 Pursuant to the Receiver Order, the Receiver and his team performed the
 14 following duties:

- 15 • took possession of and liquidated cryptocurrency at a significant profit to the
 estate;
- 16 • subpoenaed records and performed forensic accounting to recreate missing
 accounting information and validate amounts owed to investors and others;
- 17 • prepared for the sale of real properties in North Las Vegas and Searchlight,
 Nevada;
- 18 • worked with the auctioneer, former employees, and temporary workers to
 prepare for the auction of personal property at the Speedway location, which
 netted the estate almost \$300,000 more than the auctioneer's top estimate;
- 19 • managed all utilities to ensure needed services through the auction and
 cancellation once they were no longer needed;
- 20 • worked with auctioneer and team to quickly prepare and turn over the
 warehouse to the landlord to save the estate funds;
- 21 •
- 22 •
- 23 •
- 24 •
- 25 •
- 26 •
- 27 •
- 28 •

- 1 • closed payroll accounts and made sure all payroll taxes were properly paid and
2 that all tax documents were prepared for employees;
- 3 • cancelled all business insurance after the auction to ensure coverage while
4 needed and to obtain a refund of unused premiums;
- 5 • investigated additional assets and worked to determine if they were properly
6 assets of the receivership estate;
- 7 • discussed and worked with counsel to pursue litigation against third parties;
- 8 • reviewed and proposed tax accountants to prepare unfiled tax returns; and
- 9 • continued to review documents and interview parties to determine potential
10 litigation against third parties.

11 The Receiver's fees for the Application Period are as follows:

<i>Name</i>	<i>Title</i>	<i>Hours</i>	<i>Rate/Hr.</i>	<i>Total</i>
Geoff Winkler	Receiver	226.3	\$340.00	76,942.00
John Hall	Accountant	228.1	\$310.00	70,711.00
Miliana Barkhancy	Director	55.3	\$255.00	14,101.50
Renee Dieffenderfer	Associate	143.2	\$255.00	36,516.00
Josh McGraw	Associate	275.5	\$255.00	70,252.50
Ysabel Willits	Analyst	105.5	\$150.00	15,825.00
<i>Total</i>		<i>1033.90</i>		<i>284,348.00</i>

24 Due to its broad range of experience and expertise, AFS performs almost all
25 required work in-house, saving both time and money, including tasks involving
26 corporate accounting, forensic accounting, case administration, claims
27 administration, asset valuation, investor communication and internet technology.
28 AFS' billing philosophy is to leverage work down to the staff member with the lowest

1 bill rate that also has the skills and experience necessary to complete the task. This
 2 allows AFS to minimize the cost to complete all work associated with the case,
 3 ensuring a maximum return to stakeholders involved in the matter while also
 4 preserving the quality of our work product. AFS does not bill for travel time in
 5 regulatory cases.

6 AFS's rates include a 15 percent discount off its already discounted hourly
 7 rates for government matters and will not increase for the pendency of the case. Both
 8 the standard regulatory rate and the discounted regulatory rate reflect a significant
 9 discount off our standard consulting rates.

10 All billing standards meet or exceed the SEC's Billing Instructions for
 11 Receivers in Civil Actions Commenced by the U.S. Securities and Exchange
 12 Commission (SFAR) and the U.S. Trustee's Guidelines for Reviewing Applications for
 13 Compensation and Reimbursement of Expenses.

14 The Receiver anticipates a significant drop in the number of hours required to
 15 manage this case with the sale of the personal property, closure of the business, and
 16 the turn-over of the warehouse location to the landlord as many of the hours spent
 17 this period were dedicated to tasks.

18 The Receiver's expenses for the Application Period are as follows:

<i>Category</i>	<i>Total Cost</i>
Airfare	\$5,004.37
Courier/Shipping/ Freight	\$497.58
Meals	\$1,006.50
Hotel	\$4,192.89
Technology	\$13.00
Miscellaneous	\$55.47
Parking	\$189.50

Taxi	\$607.76
Total	\$12,085.57

AFS will not seek reimbursement for routine copying, facsimile, postage, or other expenses. Any expenses which AFS seeks to have reimbursed will be done so in accordance with the SEC and U.S. Trustee guidelines above. Costs directly attributable to the administration of the estate will be paid directly by the estate in accordance with the order of appointment.

The Receiver also anticipates a significant drop in the expenses required to manage this case due to the sale of the personal property, closure of the business, and the turn-over of the warehouse location to the landlord as less travel will be necessary.

The Standardized Fund Accounting Report, AFS's invoice, and its billing entries are included with the Declaration of Geoff Winkler attached as Exhibit 1.

b. Ballard Spahr

[Fees of \$60,977.72, and costs of \$2,966.83]

During the Application Period, attorneys at Ballard Spahr LLP performed services on multiple projects. Their work included, among other things: (1) issuing and enforcing subpoenas to various entities in an effort to track, trace, and recover Profit Connect assets; (2) liaising, negotiating, and settling with third parties to ensure Profit Connect assets in their possession were properly transferred to the Receiver's control and ready for the personal property auction held in December 2021; (3) investigating, analyzing, and drafting necessary documents to ensure Profit Connect property was properly preserved for transfer to the Receiver; (4) advising the Receiver on his obligations in connection with preserving Profit Connect assets; (5) initiating the action against former Profit Connect employee William Roshak, et al. to recover over \$500,000 in fraudulently transferred Profit Connect funds, including the work associated with drafting and filing the complaint, negotiating extensions of

1 answers, and preliminary conversations regarding settlement with opposing counsel;
 2 (6) liaising and negotiating with counsel for investors on their putative class actions
 3 and other litigation to recoup monies outside the receivership, as well as filing
 4 injunction motions to stay their proceedings in violation of the receivership order; and
 5 (7) advising the Receiver on his obligations in relation to a subpoena received by the
 6 receivership estate.

7 During the Application Period, the Receiver's primary counsel from Ballard
 8 Spahr, Maria Gall, billed 110.1 hours at a standard rate of \$495.00/hour for a total of
 9 \$54,499.50. Where appropriate, she leveraged work to a third-year associate, Andrew
 10 Clark, who billed 39.8 hours at a standard rate of \$315.00/hour for a total of
 11 \$12,537.00, as well as paralegal Christine Snider who billed 0.6 hours at a standard
 12 rate of \$280.00/hour for a total of \$168.00 and paralegal Adam Crawford who billed
 13 0.9 hours at a standard rate of \$160.00/hour for a total of \$144.00. Ms. Gall will
 14 continue to leverage work where appropriate but notes that much of the work being
 15 performed is not only appropriate for a junior partner but also requires wide-ranging
 16 knowledge of the receivership and, for that reason, is more efficiently performed by
 17 her. Also where appropriate, Ms. Gall has sought the assistance of counsel with
 18 specialized knowledge. Senior partner Margie Peerce 1.2 hours at \$925.00/hour for a
 19 total of \$1,111.00 to advise on a confidential matter involving subpoenas, which is in
 20 Ms. Peerce's area of expertise. Finally, of counsel Diane Markert billed 8 hours at
 21 \$410.00/hour for a total of \$3,280.00 to advise on real estate matters, which is in Ms.
 22 Markert's area of expertise. Ballard Spahr has discounted all these standard fees by
 23 15%, and seeks \$60,977.72 in discounted fees and \$2,966.83 in costs for its
 24 professional services in Q4 2021.

25 Ballard Spahr's invoices are included with the Declaration of Maria Gall
 26 attached as Exhibit 2.

27 **c. Smiley Wang-Ekvall**

28 [Fees of \$17,967.30 and costs of \$941.41]

1 During the Application Period, Smiley Wang-Ekvall performed a number of
 2 different services that benefited the estate, including: (1) filing the motion to employ
 3 an auctioneer to sell personal property of the receivership estate; (2) revising listing
 4 agreements with a real estate broker regarding the real property; (3) preparing a
 5 stipulation regarding the procedure for selling the residential real property owned by
 6 Profit Connect; (4) beginning preparation of a motion to retain a broker to list and
 7 sell the real property; (5) preparing and obtaining Court approval of a stipulation to
 8 clarify that Profit Connect, a Nevada corporation, was a receivership entity; (6)
 9 communicating with the Kovars regarding the deadline for them to vacate their
 10 residence; (7) preparing documentation to compensate the estate for a loan that Profit
 11 Connect made to an employee to purchase a home; (8) analyzing the issue of who has
 12 standing to bring various claims against third parties; and (9) issuing subpoenas and
 13 then meeting and conferring with the recipients regarding both timing and the scope
 14 of the requested productions.

15 The Receiver's primary counsel from Smiley Wang-Ekvall billed \$17,832.15 in
 16 fees and Janet Hogan, a paralegal, billed \$135.15 in fees. These fees reflect a 15%
 17 discount off of the standard hourly rates.

18 Smiley Wang-Ekvall's invoices are included with the Declaration of Kyra
 19 Andrassy attached as Exhibit 3.

20 **d. Stroz Friedberg**

21 [Fees of \$10,758.75 and costs of \$15,064.69]

22 During the Application Period, staff from Stroz Friedberg (an Aon company)
 23 continued to assist the receiver with understanding, quantifying and collecting data
 24 from various Profit Connect IT systems, although the amount of work required has
 25 significantly decreased as the Receiver expected it would. This work included, among
 26 other things: (1) continuing to inventory digital devices used by Profit Connect
 27 principals and employees; (2) continuing to gain access to and export financial data
 28 for Profit Connect; (3) continuing to perform forensic collection of data from various

1 digital devices; (4) continuing to export data from various digital devices; (5)
 2 continuing to process and host data exported from various digital devices; and (6)
 3 continuing to perform searches of hosted data. Stroz Friedberg billed \$10,758.75 on
 4 an hourly basis and \$15,064.69 in expenses for processing and hosting and for user
 5 licenses of data collected from Profit Connect in the Relativity Electronic Discovery
 6 application. These rates and accompanying invoices already include discounts from
 7 Stroz Friedberg standard rates.

8 Stroz Friedberg's invoices are attached to the Declaration of Sergio Kopelev
 9 attached as Exhibit 4.

10 **IV. CONCLUSION**

11 Based on the foregoing and pursuant to Section X.G. of the Receiver Order, the
 12 Receiver and his professionals request entry of an order:⁸

13 (1) Allowing the Receiver \$284,348.00 in fees and \$12,085.57 in costs for the
 14 Application Period;

15 (2) Allowing Ballard Spahr \$60,977.72 in fees and \$2,966.83 in costs for the
 16 Application Period;

17 (3) Allowing Smiley Wang-Ekvall, LLP \$17,967.30 in fees and \$941.41 in
 18 costs for the Application Period;

19 (4) Allowing Stroz Friedberg \$10,758.75 in fees and \$15,064.69 in costs for
 20 the Application Period;

21 (5) Authorizing the Receiver to pay 80% of the allowed fees and 100% of the
 22 allowed costs from funds on hand in the receivership estate; and

23 (6) Granting such other and further relief as the Court deems just and

24
 25
 26
 27
 28 ⁸ The form of the order is attached as Exhibit 5.

1 appropriate.

2 Dated: February 7, 2022

3 SMILEY WANG-EKVALL, LLP

4 By: /s/ Kyra E. Andrassy
5 Kyra E. Andrassy, Esq.
6 (Admitted *Pro Hac Vice*)
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626

7 -and-

8 Maria A. Gall, Esq.
9 Nevada Bar No. 14200
10 BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

11 *Attorneys for Receiver*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SMILEY WANG-EKVALL, LLP
3200 PARK CENTER DRIVE, SUITE 250
COSTA MESA, CALIFORNIA 92626
(714) 445-1000 FAX (714) 445-1002